**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 564 OF 2005**

Shri Gurunivvan Rudra Pashupati
Guru-rudra Pashupati Maharaj
Kolekar Math. ... Appellant

V/s

Sarpanch Karkamb,
Grampanchayat Karkamb & anr. ... Respondents

Mr. R.V. More for the appellant.

Mr. S.S. Patwardhan for the Respondent No.1.

Mr. Prashant Patil for the respondent No.2.

**CORAM: P.V. KAKADE, J.**

**DATED: 29TH SEPT., 2005**

**P.C.:**

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur dated 22.4.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Pandharpur dated 25.7.2000 dismissing the plaintiff's suit for perpetual and mandatory injunction against the defendants.

2. I have heard the learned counsel for both parties.

Perused the record.

3. Defendant No.1 is the Grampanchayat of village Karkhamb, Tal. Pandharpur, whereas defendant No.2 is the Chetana Vikas Mandal, through Chairman Adinath Kashinath Devkate. The plaintiff came with the case that he was owner of the land Survey No. 767 admeasuring 32 gunthas which was renumbered as Block No.8 of village Karkhamb and it was sold under the registered sale deed in favour of the respondent No.1. The sale deed was executed on 15.4.1961. The suit property, according to the appellant/plaintiff, he is owner of the property bearing City Survey No. 15 admeasuring 468.75 sq.m. and on that basis the appellant/plaintiff has claimed perpetual injunction and mandatory injunction against the respondents alleging that the defendants have encroached upon the suit property and had constructed unauthorisedly.

Defendants contested the suit on merits inter-alia denying the allegations made by the plaintiff submitting that the case of the plaintiff was illegal and was not tenable and, therefore, the suit was sought to be dismissed.

4. The Trial Judge adjudicated the dispute on merits and on the basis of available evidence came to the conclusion that the plaintiff had failed to prove his title and possession in the suit property. It was further held that the plaintiff was also unable to prove the alleged obstruction made by the defendants and therefore he was held to be not entitled for reliefs claimed and, as such, he was non-suited.

5. The appeal was carried to the District Court at Pandharpur. The learned Addl. District Judge, after hearing both parties concurred with the findings recorded by the Trial Court and dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise question to the effect that his suit was based on Sanad issued by the competent authority relating to the suit property but the lower appellate Court has not at all taken into account the document of Sanad which showed the prima facie title of the plaintiff which should have been accepted in absence of any other evidence to rebutt the said evidence.

In this regard it must be noted that the lower appellate court has considered the time of Sanad and in fact it is observed that the respondents/defendants had preferred appeal being aggrieved by incorrect entry in City Civil record before the D.I.L.R. and the copy of the order dated 16.6.1997 is at Exh.179, which shows that the appeal was allowed and directions were given to correct the map from the office of City Survey in respect of property bearing City Survey No.15. It was alleged on behalf of the appellant that there was appeal pending against that order. However, as on today, the appellate authority's judgment stands good in law. Moreover, the learned lower appellate Court has, on the basis of available evidence also found that there was reason to believe that taking undue advantage of wrong entry of City Survey record suit was filed. In other words, the both the Courts below have come to the conclusion that the document of Sanad as well as city survey record were not sufficient to prove the case of the plaintiff and for that reason concurrent findings were recorded against the plaintiff which non-suited him.

7. In this regard it must be noted that both the Courts below seen to have properly appreciated the entire

evidence and, therefore, it would brook no interference. Time and again it has been held by various Courts including the Apex Court that when in a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In view of this legal position and the fact that there is no substantial question of law involved in this appeal, I hold that the appeal is devoid of any merits and, as such, deserves to be dismissed.

In the result, the appeal stands dismissed with no order as to costs.

8. It is clarified that the appellate authority before which the appeal against the City Survey record entry is pending, shall not be enfluenced by this order.

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